

CHOICES

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In this month's issue of the Institute Newsletter Gordon Robertson, author of a recent publication, Northern Provinces: A Mistaken Goal, sets out the case against provincial status for Yukon and the Northwest Territories. The following article by Massey Padgham, Editor of the Whitehorse Star, presents the counter argument in favour of provincehood.

By publishing these two opposing points of view simultaneously the Institute hopes to stimulate active discussion. We hope that other interested parties, using Choices as their forum, will take the opportunity to develop the debate on this issue further.

Provincehood

by Massey Padgham

Gordon Robertson's argument in Northern Provinces: A Mistaken Goal can be summarized quite simply. The provincial "club" won't allow the entry of new provinces and the territories could not afford to become provinces under existing financial arrangements anyway. Thus, he says, don't bother trying to become a province, but become an "autonomous federal territory."

Mr. Robertson's argument has merit—the problems he outlines no doubt exist—but he has suggested sidestepping the problems rather than suggesting trying to do something about them. Problem recognized, problem avoided, might be considered his theme.

However, it seems to me that avoiding problems at all costs is hardly being fair to the rights or aspirations of northerners.

Mr. Robertson suggests that a new form of government is needed in order to allow northerners to choose the structure of government they wish, rather than slavishly following the structural pattern of southern provinces. I disagree. Yes, northerners are interested in experimenting with structures that fit their needs better than the structures in use in the Province of Ontario. However, I suggest that the necessary flexibility exists within the scope of provincehood.

This discussion has a lot to do with one's perceptions of a province. A dictionary is very general, defining a province as a main political or economic division within a country. Obviously, it's too general in the Canadian context, because by that definition the northern territories could already be considered provinces, and certainly they aren't that in any Canadian mind.

Mr. Robertson has a fairly detailed view of what a province is—it includes membership in the "provincial club" which defines the external relationships of provinces within Canada, and it shares in a set financial framework of equalization payments. Of course, they are also autonomous, responsible governments with a set list of powers and duties, outlined in the various documents that make up the Canadian constitution. It also, to Robertson, means a particular variant of parliamentary government—thus his suggestion that the form of government may not be appropriate to the North.

It's when that rigid definition is used that one gets comments from some northerners that they do not want provincehood. For example, Yukon Government Leader Tony Penikett, in reacting to Robertson's book, said he felt Robertson had made a mistake in assuming that all or even the bulk of northerners want provincehood.

In my view, Robertson's definition is a rather narrow, static view of provincehood

that most average Canadians carry. Provincehood, for me, means an autonomous, responsible form of government, with the various responsibilities and duties we commonly confer on provinces. It means a general right to participate in the national decisions that affect Canadians—everything from constitutional meetings to meetings of provincial ministers for discussions on a number of specific topics.

Under that definition, the Yukon, for example, is de facto most of the way to being a province. It has basically the same responsibilities as were conferred on Alberta and Saskatchewan when they became provinces. The Yukon and Northwest Territories now lack responsibility only for subsurface resources, Crown land and a number of surface resource issues, such as forestry and environmental protection. Certainly, in the modern context one would probably no longer consider the 1905 structure of Alberta and Saskatchewan to be provincehood. However, the Yukon and NWT are now being asked by the federal government whether they are interested in taking on these responsibilities and under what conditions. Thus in the near to medium term future, we could very well see the Yukon and the Northwest Territories have the same internal powers and duties as provinces.

For the life of me, I cannot see why a northern province would have to slavishly follow the governmental structure of provinces in order to qualify as provinces. For one thing, Robertson's implication that provinces are all alike is quite misleading. Structurally, we may be able to come up with definitions that fit all 10 provinces, yet do not fit northern territorial governments. Yet, there is surely much practical difference between provinces—at the obvious level political scientists frequently contrast the three-party system of Ontario with the de facto one-party system of Alberta.

What I'm saying is that the way decisions are really made varies considerably from province to province. So do they differ in the North, and inside the North—the Yukon and Northwest Territories being quite different in their decision making structure. However, the basic goals of provincial government, from the point of view of an external observer, are met by the northern governments.

They're met even in the Northwest Territories, which has a structure that is much less patterned on provincial structures than the Yukon. The Northwest Territories does not have a party structure and has a government leader who can be dismissed at the whim of the legislative assembly.

Yet, even the Northwest Territories government makes decisions, passes legislation and takes stands on issues of national importance. It is those results, and not how the results are arrived at, that really should matter in relationships between provinces and between the federal government and the provinces.

Thus my basic premise here is that one should be able to be a "province" in the general legal and political sense and still have whatever variety of internal government one wishes. One does not, as Mr. Robertson assumes, have to follow some sort of "southern structural model" in order to qualify as a province.

No doubt, my view that the internal governmental structure does not really matter is going to bother some provincial purists. To allay those fears, let me note that northern territorial governments are more like provincial governments than they are unlike provincial governments. Look at the Northwest Territories, which is most unlike a typical province; we can still see the basic legislature that debates and gives bills three readings. We have an executive modelled in terms of its operations on a provincial cabinet. And we have an administration that is broken into typical departments and operates almost in the same way as any provincial department with deputy ministers as the senior civil servants.

The principal difference in the Northwest Territories is the lack of an organized party structure. That means the government leader, cum premier, cannot be chosen by the typical party process and the government leader cannot choose the cabinet. Instead the legislature chooses the cabinet. The significance of this is that the legislature wields much more real power. In a way, it is a system that is probably much closer to that envisaged by the Fathers of Confederation, who chose to ignore the existence of political parties in framing Canada's legislative-governmental structure. The point I'd like to make here is that a close observer can still see party-like groupings in the Northwest Territories

legislature, even if they are only informal. It is different from most southern provinces, because the issues are different—the groupings in the Northwest Territories tend to be urban versus rural, east versus west, even native versus non-native, rather than left versus right. They are flexible changing allegiances, unlike a rigid party structure, but they have the comparable function of drawing together a majority on many particular issues.

The Yukon, on the other hand, has the typical party structure of the West (Progressive Conservative versus New Democrat, with a few token Liberals). It is perhaps in his discussions of internal government structures that Robertson has hit a raw nerve in the Yukon. He has taken the Northwest Territories reality, which requires structures with at least a few degrees of difference from the southern provinces, and extrapolated it to the North, including the Yukon with which he is far less familiar. That is a longstanding complaint in the Yukon—that the two territories are lumped together in some sort of mythical "North". The fact is that the two territories are as different as Quebec and British Columbia. Currently, in the Yukon, in direct contrast to Mr. Robertson's view, there is next to no feeling that the structure of government, patterned as it is on provinces, is not appropriate to the Yukon. Yes, there have been discussions, such as those in the continuing land claims process, about ensuring native participation in decision making. That discussion has in the past looked at a number of advisory or management boards on which native participation would be guaranteed. Boards have all sorts of powers in the provinces, so such an idea would hardly mean an "unprovincial" structure of government. Even the more radical ideas that have been floated in the Yukon, such as guaranteeing a number of legislative seats to the native minority, do not mean a dramatic departure from the essential form of provincial government with which Canadians are familiar. And certainly those differences aren't big enough to force a brand-new type of government, as Mr. Robertson feels, designed to allow a more flexible structuring of government. Most of the current discussions about provincehood relates not around whether such status is due northerners—that's assumed—but whether the powers and responsibilities that come with provincial

status are affordable. That's an issue I'll touch on later.

Both territories already show they can deal with most provincial type responsibilities and the federal government could easily arrange to transfer the others to territorial control within existing territorial governmental structures. That's the practical view. Both territories are taking on far more responsibility and operating as "responsible" governments without the proper legal authority. The Yukon and Northwest Territories Acts, the territorial constitutions, have references to the federal commissioner as the head of government. In the Yukon, the practice is that the commissioner acts as a lieutenant governor (another provincial attribute), and the NWT commissioner is rapidly fading into the background too. Changing the legislation to match practical reality, however, is really a simple matter of the federal government getting around to it. It's hardly an issue for discussions in the debate over provincial status.

To conclude then, internal governmental structures have far less to do with becoming a province than the willingness to take on authority for, and deal with properly, the responsibilities that go with provincehood. How those decisions are made internally should not really matter.

A key part of Mr. Robertson's analysis has to do with the entry to the "provincial club". He argues that provinces would not be amenable to entry of new provinces, for fear of upsetting the balance, and would be especially unlikely to allow entry of new provinces if a special case, such as with financing, has to be made for them.

The provinces went so far in protecting their interests that they got a clause in the Constitution Act (1982) to ensure they had a say in the establishment of new provinces. An indication of how right Mr. Robertson was on that point was the reaction of northern governments to that clause, Section 42 of the Constitution Act, when it was being debated in Parliament. All 22 Northwest Territories legislators flew to Ottawa to lobby against the club. The Yukon's MP, Erik Nielsen, unsuccessfully sought to change the clause.

Yes, it would be difficult for northern territories to enter the provincial club. But, I do not feel it is as difficult as Mr. Robertson suggests.

For example, Mr. Robertson argues that the amending clause of the Constitution is

carefully balanced to ensure, in effect, that no region's interests can be overridden by the other provinces acting in concert. The clause requires approval of two-thirds of the provinces representing half of Canada's population in order to approve a constitutional change. If the Yukon were, for example, to gain provincial status, the number of provinces required for two thirds approval may go up by one. This means, at most, that it may be more difficult to get constitutional change, because one more participant would have to be persuaded to go along. The real fear, that northern provinces could affect the regional balance, is groundless. The Yukon and Northwest Territories wouldn't even count when it came to adding up 50 per cent of the country's population—and it's that 50 per cent that is the true cap of constitutional change. (The only possible influence might arise if northern provinces were to align themselves with Ontario in making up the necessary two-thirds of the provinces in support of some amendment which in any case was assured the support of provinces having over one-half the population. But this is an unlikely possibility considering the two northern territories generally lump themselves with western, not central or eastern, interests.) Thus in terms of voting, northern provinces may weigh the scale slightly, but could hardly tip the balance of constitutional change.

If their vote would hardly matter at the constitutional level, why should the Yukon and NWT bother to seek entry into this club? It's because the formal status of provincehood is politically very important to our federal system. Just because it may be difficult to get in, is not a reason not to try to get in.

The slim population of the North has been stated outright by a number of people as a reason not to allow northern provinces. It has been implied by many more, including Mr. Robertson. But, northerners have as much right to be represented in the various forums of inter-provincial and federal-provincial workings as other Canadians. That is a major principle of our nationhood. It is why the smallest province has but a fraction of the population of the largest city in the most populous province. Prince Edward Island has the same formal status as Ontario at provincial councils. Likewise the territories should have the same formal status, even though their population is to

Prince Edward Island as Prince Edward Island's is to Toronto. In reality, of course, the Yukon's voice would carry less weight than that of Prince Edward Island, just as PEI's voice carries less weight than that of Ontario. But the formal standing is one of equality.

Some have suggested that the federal government represents the northern territories in federal-provincial affairs. That is sheer rubbish. As the Yukon's Mr. Penikett has noted, the federal government sometimes operates in direct opposition to territorial interests because national and territorial interests coincide no more nor less often than federal interests and the interests of any one province. An obvious example is Ottawa's willingness to go along with the clause in the Constitution that means it can no longer create new provinces on its own, making it more difficult for northern territories to attain provincial status.

The simple fact is that northerners have the same political rights as other Canadians and it is rank colonialism to conveniently ignore that fact. It is also a principal reason for conveying the legal-constitutional status of provinces on the North, even if the North cannot get along as well as provinces on economic matters.

"We should not have to come begging for participation in meetings affecting all Canadians like those of the constitution now underway," said the Yukon's government leader in 1980, Chris Pearson, as federal and provincial officials met to discuss a constitution for Canada.

It's also more than a matter of population. Canada's identity, to a large degree, is being a northern country with a large arctic and subarctic area. So it's more than a small irony that the people who live in that arctic and a good chunk of the subarctic, the ones who should talk about its future and needs, are shut out of most federal-provincial councils. Provincial governments, remember, represent not just their people, but their geographical and regional interests.

At a more mundane level, the Yukon's gradually increased role in provincial officials and ministers' meetings—such as the regular meetings of education ministers—was threatened briefly recently after one province suggested that only provinces should be involved. Nothing came of the issue, though northern politicians got quite a scare. Yes, that does prove Mr. Robertson's point about the



difficulty of joining the club. But it also shows the lack of thought that goes into some people's views of the proper place of the North. The Yukon has exactly the same jurisdiction over education as the provinces—surely then they have the same needs, requirements and right to be involved in meetings that discuss issues ranging from how much money Ottawa provides for education to transfer of educational credits between jurisdictions.

It's for reasons like this that I feel the eventual goal has to be provincial status of some general form.

No question it will not be an easy battle to win. But no one is suggesting it will be a quick, easy battle. The Yukon's government leader since last May, New Democrat Tony Penikett, is taking the view that the Yukon should gradually take on new responsibilities from Ottawa. Then by its handling of them and its statements in those national forums it is let into, the Yukon government must prove that it is worthy of being taken seriously and has valid points to make.

Mr. Robertson's other main point has to do with money. He's right. The Yukon and Northwest Territories could not survive under the equalization formula with which provinces live—the North, because of how it taxes its residents, wouldn't qualify for payments, yet clearly northern governments would go bankrupt without their federal grants.

There is, of course, an irony here. Many analysts say that right now the North cannot afford provincial status. Thus, they say, the North should not become provinces. That ignores the issue of whether ability to pay should have anything to do with gaining provincial status.

Then, on the other hand, many analysts (and sometimes the same ones) say that the North couldn't possibly be given provincial status a decade or two from now when it is booming and resources are being developed. The reason—a small number of people shouldn't control a large number of resources that the country as a whole needs.

Besides the obvious contradiction, such a view takes an insulting view of northerners. In the South, there are provincial interests that are defended. But national priorities are also recognized by provincial governments, even if they ask for some amendment in them to meet provincial interests. Similarly, a northern province is not going to prevent resources

that the rest of the country needs being extracted, though like any province the northern ones can be expected to want to benefit too. Any possibility that a thinly populated area might eventually get overly rich from resources can be met by ensuring that it becomes a part of the equalization system in plenty of time before it becomes a "have" province and thus helps supports the "poor" provinces.

The problem of not being able to afford to live under the provincial-style equalization system means the Yukon and Northwest Territories must be a special case to attain provincehood in the short and medium term. Mr. Robertson suggests the provinces would not allow a special case, because a fundamental principle of provincehood is equality. However, there are historic precedents of special cases being made, if only on a limited scale. True, the provinces may not go for it if it costs them money, but I cannot see the provinces disagreeing if the federal government foots the bill.

And Ottawa has demonstrated that it is willing to foot the bill. It already does. The outlay of money is not going to change much whether the federal Department of Indian Affairs and Northern Development is delivering a range of provincial-type services, such as administration of Crown land, or the Yukon government is doing it and receiving an operating grant from the federal government. Money is a major reason why the new Yukon government isn't rushing into provincial status—there are now few comments about "provincehood now whatever the cost"—instead the Yukon government is saying let's seek more responsibility but also figure out with the federal government how we're going to pay for it.

The difficulties of financing and provincial status will come when the Yukon can stand on its own feet and has to be worked into the equalization system. Frankly, that's probably so far away that we needn't worry about it overly.

Despite my views, I see merit in the idea of an autonomous federal territory—not as a goal, mind you, but as a stepping stone on the way to provincial status, be that status five, ten or thirty years away.

The constitutional sections requiring provincial approval for new provinces also, northern politicians feel, open a window to provinces being extended northward and taking in part of the northern territories. It's an idea that is universally despised

An autonomous federal territory also provides a legal framework for what northern territories have become in practice—provinces in all but constitutional status and membership in the club. If such a structure is to work well as an interim measure, while northern territories mature and prove they should be full-fledged provinces, it should have a built in mechanism to allow for some level of territorial input into federal/provincial councils—an invitation to be a guest at certain functions of the club.

Robertson's suggestion might prove is just what northerners want. In the Northwest Territories, the concern has been internal relationships, east and west, for some time now. In the Yukon, provincial status has had little detailed public discussion. Now, the Yukon is talking about some method of holding those discussions, perhaps some sort of constitutional forum, to see what Yukoners want first, before blindly pushing ahead to take on significantly increased responsibilities or provincial status. Those findings will decide at what pace the Yukon wants to move towards its own view of provincehood. If the answer is slowly, then the autonomous federal territory may be a valuable interim measure. If the answer is to move quickly, the question will be one of meeting the problems Mr. Robertson outlines head-on and dealing with them.

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Contributions to Choices have come mainly from the Institute Board and Council members, its research staff and authors. We would like to invite interested and informed citizens in general to use it also as their sounding board.

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